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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

Cr. (KBF) (RWL)

5 BRIAN SWEET,

6 Defendant.

7 -----x
8 January 5, 2018
9 11:45 a.m.

10 Before:

11 HON. ROBERT W. LEHRBURGER,

12 Magistrate Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN

Interim United States Attorney for the
Southern District of New York

16 BY: JESSICA GREENWOOD

17 AMANDA K. KRAMER

REBECCA G. MERMELSTEIN

18 Assistant United States Attorneys

19 ORRICK, HERRINGTON & SUTCLIFFE, LLP

Attorneys for Defendant

20 BY: ANDREW J. MORRIS

21 RICHARD MORVILLO

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(Case called)

MS. MERMELSTEIN: Good morning, your Honor. Rebecca Mermelstein, Amanda Kramer and Jessica Greenwood for the government.

MS. KRAMER: Good morning, your Honor.

MS. GREENWOOD: Good morning.

MR. MORVILLO: Good morning, your Honor. Richard Morvillo and Andrew Morris from Orrick for the defendant.

THE COURT: Good morning. You may be seated.

Good morning, Mr. Sweet.

THE DEFENDANT: Good morning.

THE COURT: I am Magistrate Judge Lehrburger, as you probably have been told. I understand you are here because you wish to enter a plea with respect to certain charges against you. How do you intend to plead today?

THE DEFENDANT: Guilty, your Honor.

THE COURT: You may be seated.

Deputy, can you please swear in the witness?

I need to have you sworn in because I'm going to ask you a number of questions so I am going to need truthful answers.

THE DEFENDANT: Yes, your Honor.

THE DEPUTY CLERK: Please stand and raise your right hand.

(Defendant sworn)

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1 THE COURT: Do you understand that based on that oath,
2 that any statements you make here today, made under oath, may
3 be used against you in a prosecution for perjury or for making
4 false statements if you have not told the truth?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Failing to tell the truth today is a
7 crime. Do you understand?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: I now have before me a Consent to Proceed
10 before a United States Magistrate Judge on a Guilty Plea
11 Allocution. Have you signed this consent, Mr. Sweet?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: The form says you have the right to have
14 your plea taken by a United States district judge but you are
15 consenting to have it taken by me, a United States magistrate
16 judge. As magistrate judge, I have the authority to take your
17 plea with your consent, and you will be entitled to all the
18 rights you would otherwise have if you were proceeding before a
19 district judge. And if you were proceeding before a district
20 judge to trial, among other things and if you are found guilty,
21 you would be sentenced by a district judge and you would be
22 sentenced by a district judge in this case after you entered
23 your plea.

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: And, in signing the consent form, you do
2 it voluntarily and of your own free will?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Did you discuss it with counsel?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: I will accept the consent and sign it.

7 The instrument or document I have by which you are
8 charged is an information. You otherwise have the right to
9 proceed by indictment. Does defendant waive indictment?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: So, I just need to explain that for a
12 little bit and make sure you have a full understanding.

13 Under the Constitution you have the right to be
14 charged by a grand jury rather than an information like this
15 that is issued by the U.S. Attorney, so if you give up your
16 right to proceed with an indictment you will be giving up your
17 right to have your matter considered by a grand jury.

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: I have before me a form that is a waiver
21 of indictment. Again, it appears to have your signature. Did
22 you in fact sign this document?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: You discussed the consequences of waiving
25 indictment with your counsel?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And you discussed the advantages and
3 disadvantages of doing so?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Have any threats or promises been made
6 against you in order to waive indictment?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: So, do you wish to give up your right to
9 proceed before a grand jury?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: I will accept the waiver.

12 I have to ask you a number of questions to make sure
13 that you are competent to give your plea and that you are doing
14 so voluntarily and that you understand the rights that you may
15 be giving up and the consequences and penalties of doing so, so
16 I am going to start with asking you questions about competency.
17 If you don't understand any of my questions, please let me know
18 and I will rephrase them or restate them.

19 What is your full name?

20 THE DEFENDANT: Brian John Sweet.

21 THE COURT: How old are you?

22 THE DEFENDANT: 40 years old.

23 THE COURT: I take it that English is your native
24 language?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: And you can read and write English, yes?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: How far did you go in school?

4 THE DEFENDANT: I earned a bachelors degree from the
5 University of Notre Dame.

6 THE COURT: Are you currently or have you recently
7 been under the care of a doctor, a psychiatrist, or a
8 psychologist?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: Do you have any condition that affects or
11 impedes your ability to see or hear?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Do you have any condition that affects
14 your ability to think, to reason, or to render a decision on
15 behalf of yourself?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: Have you ever been hospitalized for a
18 mental illness, alcoholism, or narcotics addiction?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: As you sit here today are you under the
21 influence of any alcohol or mind-altering drug?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: Do you feel all right today?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you feel okay in your mind?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand what is happening here?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: Have you seen a copy of the information
5 stating the charges against you?

6 THE DEFENDANT: Yes, I have, your Honor.

7 THE COURT: Have you read it?

8 THE DEFENDANT: Yes, I have.

9 THE COURT: Did you go over it with your counsel?

10 THE DEFENDANT: Yes, I have.

11 THE COURT: And did you discuss how you wish to plead
12 in light of those charges?

13 THE DEFENDANT: Yes, I have.

14 THE COURT: Has your attorney explained to you the
15 consequences of pleading guilty?

16 THE DEFENDANT: Yes, they have.

17 THE COURT: Does either counsel have any concerns or
18 objections about the defendant's competency to plead at this
19 time?

20 MS. MERMELSTEIN: No, your Honor.

21 MR. MORVILLO: None here, your Honor.

22 THE COURT: I am now going to explain to you some of
23 the rights you will be giving up by pleading guilty. These are
24 rights that you have under the United States Constitution so
25 please listen carefully and, again, if you don't understand

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1 something I say or don't hear something I say, please, let me
2 know.

3 So, under the Constitution you have a right to plead
4 not guilty to the charges contained in the information.

5 Do you understand that?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: If you plead not guilty you would be
8 entitled, under the Constitution, to a speedy and public trial
9 before a jury on those charges. At that trial you would be
10 presumed innocent and the government would be required to prove
11 your guilt beyond a reasonable doubt and you could not be
12 convicted unless a jury of 12 people agreed unanimously that
13 you were guilty beyond a reasonable doubt.

14 Do you understand that?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: And, if you decided to go to trial, at
17 that trial and every stage of the case you would have the right
18 to be represented by an attorney, and if you could not afford
19 one an attorney would be appointed for you. My understanding
20 today you have retained counsel but if for any reason you ran
21 out of funds to continue to retain counsel, an attorney would
22 be appointed for you all the way through trial so your decision
23 today should not depend at all on whether you can afford to
24 hire an attorney.

25 Do you understand that?

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1 THE DEFENDANT: Yes, I do, your Honor.

2 THE COURT: During a trial the witnesses for the
3 prosecution would have to come to court and testify in your
4 presence where you could see and hear them and your counsel
5 would have the right to cross-examine them and, if you wanted,
6 your lawyer could offer evidence on your behalf and you would
7 be able to use the Court's subpoena power to compel witnesses
8 to come to court on your behalf, even if they didn't want to.

9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: At a trial you would have the right to
12 testify in your own defense but you would also have the right
13 not to testify and if you chose not to testify, that could not
14 be used against you in any way or no inference could be drawn
15 as to your guilt concerning the charges against you.

16 Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: If you are convicted at trial you would
19 have the right to appeal that verdict to a higher court.

20 Do you understand that?

21 THE DEFENDANT: Yes, I do.

22 THE COURT: As I said before, you have the right to
23 plead not guilty, even right now. You can change your mind if
24 you so choose but if you do plead guilty and if I accept your
25 plea, you will give up the right to a trial and all other

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1 rights that go with it that I have just described. If you
2 plead guilty there will be no trial. All that will remain will
3 be for the District Court judge to impose sentence.

4 You and the government will have the chance to make
5 arguments about sentencing but there will not be any further
6 trial to determine your guilt or innocence regarding the
7 charges.

8 Do you understand that?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: Finally, if you do plead guilty, you are
11 also giving up the right not to incriminate yourself and I will
12 ask you questions about what you did. I am going to ask you
13 questions here in order to satisfy myself that you are actually
14 guilty. By pleading guilty you will be admitting both factual
15 and legal guilt.

16 Do you understand that?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: I am now going to review with you charges
19 to which you intend to plead guilty, those are Counts One and
20 Two of the information. Count One of the information charges
21 the defendant with conspiracy to defraud the United States from
22 at least in or about April 2015 through in or about February
23 2017 by misappropriating, obtaining, sharing, and using
24 confidential information, misappropriated from the Public
25 Company Accounting Oversight Board, known as PCAOB, in order to

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1 fraudulently affect PCAOB inspection outcomes, the results of
2 which are required to be and are reported to the United States
3 Securities and Exchange Commission, known as the SEC, and are
4 utilized by the SEC in the lawful function performing its
5 government functions, thereby impeding, impairing, defeating
6 and obstructing the lawful function of the SEC in violation of
7 Title 18, United States Code, 371.

8 I am going to ask the United States attorney to state
9 the elements of what would be required to prove this count.

10 MS. MERMELSTEIN: The elements of that count, your
11 Honor, are first that the defendant enter into an agreement
12 with at least one other person, that the object of the
13 agreement was to obstruct a lawful function of the government
14 by deceitful or dishonest means, and that at least one overt
15 act was committed in the Southern District of New York.

16 THE COURT: Thank you.

17 With respect to the charge one which you are pleading,
18 I need to understand the maximum penalty that can be imposed
19 with that count and then I am going do the same with respect to
20 the second count to which you are pleading. The maximum for
21 Count One carries a maximum sentence of imprisonment of five
22 years, a maximum term of supervised release of three years, and
23 you should understand that if you are placed on supervised
24 release and thereafter violate any condition of that supervised
25 release, the district judge can revoke the term of supervised

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1 release previously imposed and return you to prison without
2 giving you any credit for time previously served on
3 post-release supervision.

4 Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: So, there is a, as I said, a maximum term
7 of supervised release of three years, there is a maximum fine
8 of up to \$250,000 or -- that's the greatest of \$250,000 or
9 twice the gross pecuniary gain derived from the offense or
10 twice the gross pecuniary loss to a person other than the
11 defendant as a result of the offense. There is also a
12 mandatory special assessment of \$100.

13 In addition, there is a requirement of restitution in
14 an amount to be specified by the Court and an admission to
15 forfeiture to require you to forfeit any and all property, real
16 or personal, that constitutes or is derived from the commission
17 of the offenses alleged in the count.

18 Do you understand?

19 THE DEFENDANT: Yes, I do, your Honor.

20 THE COURT: Count Two of the information charges you
21 with conspiracy to commit wire fraud from at least in or about
22 April 2015, through in or about February 2017 in connection
23 with your participation in a scheme to defraud the PCAOB by
24 misappropriating, embezzling, obtaining, sharing, and using the
25 PCAOB's valuable confidential information in violation of

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1 Title 18, United States Code, Section 1349.

2 Counsel, can you please explain what the elements are
3 of this offense?

4 MS. MERMELSTEIN: Yes, your Honor.

5 The elements are that are two or more persons entered
6 into a conspiracy to commit wire fraud and that the defendant
7 knowingly and willfully became a member of the conspiracy.
8 There is no overt act requirement for conspiracy to commit wire
9 fraud. With respect to the underlying wire fraud, the
10 government has to prove that the defendant participated in a
11 scheme to defraud involving interstate wires, that is to say,
12 for example, e-mails or telephone calls, placed between, in
13 this case, California and New York.

14 THE COURT: Thank you.

15 Count Two carries a maximum sentence of imprisonment
16 of 20 years, a maximum term of supervised release of three
17 years, a maximum fine of up to the greatest of \$250,000, twice
18 the gross pecuniary gain derived from the offense or twice the
19 pecuniary loss to a person other than the defendant as a result
20 of the offense and, again, a mandatory special assessment of
21 \$100.

22 You are also subject to penalty of restitution in an
23 amount to be specified by the Court and, as I indicated before,
24 forfeiture of any and all property, real or personal, that
25 constitutes or is derived from the commission of the offenses

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1 alleged in Count Two.

2 I also understand that at least two weeks prior to the
3 date of sentencing you have agreed to file with the IRS and
4 provide copies to the office accurate amended tax returns for
5 the years 2014 and 2015 and will pay or will enter into an
6 agreement to pay past taxes due and owing by you to the
7 Internal Revenue Service including applicable penalties, if
8 any, on such terms and conditions as will be agreed upon
9 between you and the Internal Revenue Service.

10 MS. MERMELSTEIN: Your Honor, I'm so sorry to
11 interrupt. The parties made a small change to those dates in
12 the hard copy and initialed it and I wonder if you have an
13 unsigned copy in front you.

14 THE COURT: I do. I am working from a different copy.

15 MS. MERMELSTEIN: It doesn't reflect the change? It
16 now reads: The years 2012 through 2016, as necessary.

17 THE COURT: So noted. Thank you.

18 MS. MERMELSTEIN: Thank you.

19 THE COURT: And with regard to the maximum sentence
20 that I indicated, there are two counts to which you are
21 pleading guilty so the maximum sentence of incarceration is a
22 consecutive sentence of 25 years' imprisonment, in total.

23 Have you understood everything I have said so far?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: At this time I would ask counsel for the

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1 defense and the plaintiff and the defendant himself to approach
2 so that we can have a side bar.

3 (Continued next page)

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(At side bar)

THE COURT: Mr. Sweet, as part of the agreement there is a provision that the government may provide a motion for making motion to the sentencing judge on your behalf in light of your assistance and cooperation in this case. However, you should understand that that is not a guarantee and that it is within the discretion of the government to determine what assistance you have given, the sufficiency of it, and what recommendation, if any, should be made in light of that.

Do you understand?

THE DEFENDANT: Yes, your Honor.

THE COURT: Thank you. Everybody may return.

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(In open court)

THE COURT: I also need to advise you of the following which is if you are not a citizen of the United States, then your guilty plea may also have adverse consequences for your ability to remain in or return to the United States including removal, deportation, denial of citizenship, and denial of admission to the United States in the future. If that does happen, you will still be bound by your guilty plea, that is, you will not be able to withdraw it, regardless of any advice that you have received from counsel or others regarding immigration consequences of your plea.

Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: And, summing up in this regard, do you understand the charges against you and the consequences of pleading guilty to Counts One and Two?

THE DEFENDANT: Yes, your Honor.

THE COURT: I now have a few questions for you to ensure that the plea you are giving is fully voluntary. So, has anyone threatened, forced, or coerced you in any way, either directly or indirectly, to plead guilty?

THE DEFENDANT: No, your Honor.

THE COURT: It is mentioned before there is a plea agreement in this case and I just need to find the original, which I have, and it is a five-page agreement dated January 4,

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1 2018, appears to have your signature. Did you in fact sign
2 this plea agreement?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Did you discuss it with counsel before
5 signing it?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Did you have the consequences explained to
8 you and the terms explained to you?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you understand the terms and conditions
11 of that agreement?

12 THE DEFENDANT: Yes, I do, your Honor.

13 THE COURT: Aside from what is contained in this
14 letter, have any promises been made to you in order to get to
15 you plead guilty?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: So, do you understand that as long as the
18 sentencing judge, the district judge, imposes a term up to the
19 maximum of what is stated in this letter, you are giving up
20 your right to challenge your sentence, whether by direct
21 appeal, writ of habeas corpus, or otherwise?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that by pleading guilty
24 you also will not be able to appeal the fine up to the maximum
25 amount described in this letter, any lawful sentence of

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1 supervised release, any restitution that is ordered by the
2 Court, or any forfeiture as set forth in the agreement?

3 Do you understand this?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you also understand the same, you are
6 giving up your right to appeal with respect to the penalties
7 and payments have you agreed to make to the IRS?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: I want you to understand that the
10 sentencing judge has full discretion to impose a sentence that
11 he or she believes is appropriate and allowed under the law and
12 that whatever agreement there exists between you and the
13 government, the judge is still free to impose the sentence that
14 he or she decides is appropriate in his or her discretion.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And that even if a sentence is imposed
18 that disappoints you or surprises you, you are not entitled to
19 withdraw your plea on that basis.

20 Do you understand?

21 THE DEFENDANT: Yes, I do, your Honor.

22 THE COURT: Do you understand that there are certain
23 factors that the Judge may consider in deciding what sentence
24 to impose?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Do you understand that there are
2 sentencing guidelines that may apply to your case that will
3 inform the Court as to what sentence to impose?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: And, in issuing its sentence, the Court
6 will also consider a presentence report prepared by the
7 probation department in advance of your sentencing. Before you
8 are sentenced, you and the government will have an opportunity
9 to challenge the facts reported by the probation officer.

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Are there any additional aspects of the
13 consequences of penalties that the government or defense
14 counsel would like me to explore with the defendant that he
15 understands?

16 MS. MERMELSTEIN: No, your Honor.

17 MR. MORVILLO: No, your Honor.

18 THE COURT: Mr. Sweet, now that you have been advised
19 of the charges against you, the possible penalties you face and
20 the rights you are giving up, is it still your intention to
21 plead guilty to Counts One and two of the information?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Is your plea voluntary and made of your
24 own free will?

25 THE DEFENDANT: It is voluntary, your Honor.

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1 THE COURT: Mr. Sweet, with respect to Count One of
2 the information how do you plead; guilty or not guilty?

3 THE DEFENDANT: Guilty.

4 THE COURT: And with respect to Count Two of the
5 information, how do you plead; guilty or not guilty?

6 THE DEFENDANT: Guilty, your Honor.

7 THE COURT: Can you please tell me in your own words
8 what it is that you did in violation of the law?

9 THE DEFENDANT: From at least in or about April 2015
10 up to and including in or about February 2017, I and others,
11 willfully and knowingly, agreed and did obtain, share, and use
12 confidential information from the PCAOB in order to affect
13 PCAOB inspection outcomes which are, in turn, reported to the
14 SEC. The PCAOB transmits inspection reports to the SEC which
15 uses those inspection reports to carry out its regulatory
16 oversight and enforcement functions. In connection with these
17 crimes, I and others used e-mail and telephones across state
18 lines.

19 THE COURT: When you committed these acts, did you
20 know that they were illegal and in violation of law?

21 THE DEFENDANT: I did not have an understanding of
22 that at the time, your Honor, but I do understand that now.

23 THE COURT: And where did you commit these acts?
24 Where were you when you committed them? In general, geographic
25 area.

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1 THE DEFENDANT: Geographically would include New York
2 and California.

3 THE COURT: And you say New York; what part of New
4 York?

5 THE DEFENDANT: Manhattan.

6 THE COURT: Are there any additional questions that
7 you would like me to ask the defendant?

8 MS. MERMELSTEIN: No, your Honor.

9 I would just proffer to the Court, I don't think there
10 is any dispute that the confidential PCAOB information with
11 respect to the wire fraud count had monetary value to the
12 PCAOB.

13 THE COURT: Do you believe that there is a sufficient
14 factual predicate for a guilty plea?

15 MS. MERMELSTEIN: Yes, your Honor.

16 I think, similarly, with respect to the telephone
17 calls and e-mails that constitute the wires in the case, we
18 would proffer that many of them took place between the Southern
19 District of New York and California and thus constitutes overt
20 acts in the Southern District of New York.

21 THE COURT: Understood.

22 MS. MERMELSTEIN: No further questions, your Honor.

23 THE COURT: Does the government represent that it has
24 sufficient evidence to establish guilt beyond a reasonable
25 doubt?

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1 MS. MERMELSTEIN: Yes, your Honor.

2 THE COURT: Let me ask defense counsel, are there any
3 additional questions you would like me to ask the defendant?

4 MR. MORVILLO: No thank you, your Honor.

5 THE COURT: Do you believe there is a sufficient
6 factual predicate for a guilty plea?

7 MR. MORVILLO: I do, your Honor.

8 THE COURT: Do you know of any defense that would
9 prevail at trial or other reason why your client should not be
10 permitted to plead guilty?

11 MR. MORVILLO: No, your Honor.

12 THE COURT: Thank you.

13 Mr. Sweet, on the basis of your responses to my
14 questions and my observations of you in court today, I find
15 that you are competent to enter a plea and an informed guilty
16 plea and that there is a factual basis for it. I am satisfied
17 that you understand your rights, that you are aware of the
18 consequences of your pleading guilty, and that you have
19 admitted that you are guilty as charged in Counts One and Two
20 of the information.

21 For these reasons, I recommend the district judge
22 accept your plea.

23 I assume the government will order a copy of the
24 transcript and will submit it to the sentencing judge together
25 with any additional paperwork.

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1 MS. MERMELSTEIN: Yes, your Honor.

2 THE COURT: Has the district judge in fact set a
3 sentencing date?

4 MS. MERMELSTEIN: No, your Honor, but we will inform
5 Judge Forrest's chambers of the plea and ask for a control
6 date.

7 THE COURT: Okay. And, I direct that a presentence
8 report be prepared.

9 Will the government be able to deliver a case summary
10 for purposes of the presentence report to the probation
11 department within 14 days?

12 MS. MERMELSTEIN: We actually are not asking that a
13 presentence report be prepared at this time. In advance of
14 sentencing we will ask Judge Forrest to indicate she wants the
15 report prepared.

16 THE COURT: In that case, you are okay if defense
17 counsel and defendant do not make themselves available within
18 the next 14 days?

19 MS. MERMELSTEIN: Yes, your Honor.

20 THE COURT: Thank you.

21 I understood you said that you were going to be
22 seeking a control date but I would like to set one down just to
23 make sure there is something in the case. So, can we go 90
24 days out to May 7th?

25 My deputy has informed me that I went out further than

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1 I wanted to for 90 days, so April 9th would be a 90-day mark.

2 Is that okay?

3 MS. MERMELSTEIN: Yes, your Honor.

4 MR. MORVILLO: That's fine, your Honor.

5 THE COURT: I understand there is a bail application
6 for release pending trial; is that correct?

7 MS. MERMELSTEIN: Yes, your Honor. We have a proposed
8 package for your consideration on consent.

9 THE COURT: And what is that?

10 MS. MERMELSTEIN: A \$500,000 personal recognizance
11 bond to be co-signed by the defendant and his wife, travel
12 restricted to the continental United States, the surrender of
13 the defendant's U.S. and expired U.K. passport, regular
14 pretrial supervision.

15 The pretrial services report indicates the surrender
16 of firearms. The defendant has actually already surrendered
17 his firearms many months ago to local law enforcement but he
18 will provide proof to pretrial services that that has occurred
19 and those are the conditions.

20 With respect to the defendant, the signature of the
21 defendant's wife who is not in New York, the government -- and
22 the surrender of the passports which are not in New York, the
23 government has no problem with that taking place within the
24 next week.

25 THE COURT: Defense counsel, are you in agreement on

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1 these terms?

2 MR. MORVILLO: Yes, we are, your Honor.

3 THE COURT: The Court will accept these terms and we
4 will issue orders appropriately.

5 Is there an application to seal the transcript in this
6 proceeding?

7 MS. MERMELSTEIN: Yes, your Honor; as well as the
8 application to delay docketing which we have just passed up.

9 THE COURT: Does defense counsel join in that?

10 MR. MORVILLO: Yes, your Honor, we do.

11 THE COURT: I find that there are appropriate grounds
12 to do so and will sign a sealing order for this case.

13 Is there anything else from either side?

14 MS. MERMELSTEIN: No, your Honor.

15 MR. MORVILLO: No thank you, your Honor.

16 THE COURT: Okay. Mr. Sweet, I wish you well and good
17 luck.

18 THE DEFENDANT: Thank you.

19 THE COURT: We are adjourned.

20 o0o